

No. 15094

In the
United States Court of Appeals
For the Ninth Circuit

MILTON GRADY RAMSEY,	}
<i>Appellant,</i>	
vs.	
UNITED STATES OF AMERICA,	
<i>Appellee.</i>	

Opening Brief on Appeal

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<div style="display: flex; justify-content: space-between;"><div>MILTON GRADY RAMSEY, vs. UNITED STATES OF AMERICA,</div><div style="text-align: right;"><i>Appellant,</i> <i>Appellee.</i></div></div>	}	No. 15094
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Opening Brief on Appeal

JURISDICTION

Jurisdiction is conferred by Title 26, Sec. 1291 and Rule 39a of Rules of the District Court of the United States.

STATUTES INVOLVED

Title 26, Sec. 5601. PENALTY AND FORFEITURE FOR POSSESSION OF UNREGISTERED STILL OR DISTILLING APPARATUS.

Every still or distilling apparatus not registered as required by section 5174, together with all personal property in the possession or custody, or under the control of the person required by section 5174 to register the still or distilling ap-

paratus, and found in the building, or in any yard or inclosure connected with the building in which the same may be set up, shall be forfeited. Every person having in his possession or custody, or under his control, any still or distilling apparatus set up which is not registered, as required by section 5174, shall pay a penalty of \$500, and shall be fined not more than \$1,000, and imprisoned not more than 2 years.

Section 5175 reads as follows:

(a) REQUIREMENTS. — Every person engaged in, or intending to be engaged in, the business of a distiller, shall give notice in writing, subscribed by him, to the Secretary or his delegate, stating his name and residence, and if a company or firm, the name and residence of each member thereof, the name and residence of every person interested or to be interested in the business, and the precise place where said business is to be carried on; and if such business is carried on in a city, the residence and place of business shall be indicated by the name of the street and number of the building. The notice shall also state a particular description of the lot or tract of land on which the distillery is situated, and of the buildings thereon, including their size, material, and construction, that said distillery premises are not on any qualified rectifying plant premises, and such additional particulars, as the Secretary or his delegate shall, by regulations, prescribe. In case of any change in the location, form, capacity, ownership, agency, superintendency, or in the persons interested in the business of such distillery, notice

thereof in writing, shall be given to the Secretary or his delegate. Every notice required by this section shall be in such form, contain such additional particulars, and be submitted at such time or times, as the Secretary or his delegate shall, by regulations, prescribe.

Section 5603 reads as follows:

Every person engaged in, or intending to be engaged in, the business of a distiller or rectifier, who fails or refused to give notice, as required by sections 5175(a) and 5271(a), shall pay a penalty of \$1,000 and shall be fined not more than \$2,000; and every person who gives a false or fraudulent notice shall, in addition to such penalty or fine, be imprisoned not more than 2 years.

Section 5606, reads:

Any person who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not more than \$5,000 and imprisoned not more than 2 years. All distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or in any building, room, yard or inclosure connected therewith, and used with or constituting a part of the premises,

and all the right, title and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person, who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has permitted or suffered any building, yard, or inclosure, or any party thereof, to be used for purposes of ingress or egress to or from such distillery, which shall be found in any such building, yard, or inclosure, and all right, title and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

Section 5691, reads:

Any person who shall carry on the business of a brewer, rectifier, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or manufacturer of stills, and willfully fails to pay the special tax as required by law, shall, for every such offense, be fined not more than \$5,000, and imprisoned not more than 2 years. All distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard or enclosure connected therewith and

used with or constituting a part of the premises, shall be forfeited to the United States.

Section 5642 reads as follows:

Any person who violates any provision of section 5008(b), or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under such section, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp required to be destroyed by such section, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such stamp, or who reuses any stamp required to be destroyed by such section, or who places any distilled spirits in any bottle, which has been filled and stamped under such section without destroying the stamp previously affixed to such bottle, or who affixes any stamp issued under such section to any container of distilled spirits on which any tax due is undetermined or unpaid, or who makes any false statement in any application for stamps under such section, or who has in his possession any such stamps obtained by him otherwise than as provided in section 5008(b)(2), shall on conviction be punished by a fine of not more than \$1,000, or by imprisonment at hard labor for not more than 5 years, or both. Any officer authorized to enforce any provision of law relating to internal revenue stamps is authorized to enforce this section and section 5644 (relating to the bottling of distilled spirits in bond).

Section 5632 reads as follows:

All distilled spirits found elsewhere than in a distillery or internal revenue bonded warehouse, not having been removed therefrom according to law, shall be forfeited to the United States. Whenever any person removes, or aids or abets in the removal of, any distilled spirits on which the tax has not been determined or paid, to a place other than the internal revenue bonded warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of, any distilled spirits from any such warehouse authorized by law, in any manner other than as provided by law, or conceals or aids in the concealment of any spirits so removed, he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not more than \$5,000 and imprisoned not more than 3 years.

The Fourth Amendment to the Constitution of the United States, provides as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Rule 41 of the Rules of Criminal Procedure reads as follows:

SEARCH AND SEIZURE.

(a) Authority to Issue Warrant. A search warrant authorized by this rule may be issued by a judge of the United States or of a state or territorial court of record or by a United States commissioner within the district wherein the property sought is located.

(b) Grounds for Issuance. A warrant may be issued under this rule to search for and seize any property

(1) Stolen or embezzled in violation of the laws of the United States; or

(2) Designed or intended for use or which is or has been used as the means of committing a criminal offense; or

(3) Possessed, controlled, or designed or intended for use or which is or has been used in violation of the Act of June 15, 1917, c. 30, title VIII, §4.40 Stat. 226, and title XI, §22, 40 Stat. 230, as amended by the Act of March 28, 1940, c. 72, §8.54 Stat. 80; 18 U.S.C. §98.

(c) Issuance and Contents. A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant. If the judge or commissioner is satisfied that grounds for the application exist or there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause

for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the person or place named for the property specified. The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned.

(d) Execution and Return with Inventory. The warrant may be executed and returned only within 10 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge or commissioner shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlaw-

ful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause for believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing.

(f) Return of Papers to Clerk. The judge or commissioner who has issued a search warrant shall attach to the warrant a copy of the return, inventory and all other papers in connection therewith and shall file them with the clerk of the district court for the district in which the property was seized.

(g) Scope and Definition. This rule supersedes the Act of June 15, 1917, c. 30, title XI, §§1-6, 10, 11, 12-16, 40 Stat. 228, 229, 18 U.S.C. §§611-616, 620, 621, 623-626, and any other provision of chapter 30 of that Act inconsistent with this rule. It

does not modify any other act, inconsistent with this rule, regulating search, seizure and the issuance and execution of search warrants in circumstances for which special provision is made. The term "property" is used in this rule to include documents, books, papers and any other tangible objects.

Section 3107, Title 18, reads:

The Director, Assistant Directors, agents, and inspectors of the Federal Bureau of Investigation of the Department of Justice are empowered to make seizures under warrant for violation of the laws of the United States.

Section 5314, of the Internal Revenue Code of 1954, reads as follows:

The Secretary, his assistants, agents, and inspectors, shall investigate and report violations of this chapter or of section 7302 to the United States Attorney for the district in which committed, who is hereby charged with the duty of prosecuting the offenders, subject to the direction of the Attorney General, as in the case of other offenses against the laws of the United States; and the Secretary, his assistants, agents, and inspectors, may swear out warrants before United States commissioners or other officers or courts authorized to issue warrants for the apprehension of such offenders, and may, subject to the control of such United States attorney, conduct the prosecution at the committing trial for the purpose of having the offenders held for the action of a grand jury. Section

3041 of title 18 of the United States Code is hereby made applicable in the enforcement of this chapter and section 7302. Officers mentioned in section 3041 are authorized to issue search warrants under the limitations provided in chapter 205 of title 18 of the United States Code, and the Federal Rules of Criminal Procedure.

STATEMENT

This is an appeal from judgments of conviction on counts 2, 3, 4 and 5 of an indictment charging the appellant with violation of the Internal Revenue Code (Title 26) (1954 Internal Revenue Code), Sections 5606, 5603, 5691 and 5642. The appellant was sentenced to 2 years in the penitentiary and to pay a fine of \$500.00 on each of the counts, or a total of \$2,000.00.

Internal Revenue agents, having a search warrant for the premises located at 1011 and 1011½ West 223rd Street in Torrance, California, consisting of a small house (R. 42) in the morning of September 15, 1955, searched the two houses named in the warrant which was to search for un-tax-paid distilled spirits and found nothing in either house (R. 42 and R. 43). They then continued a search in the shed, garage and a third shed, some distance from the house. It was locked and they told appellant that unless he arranged to unlock it that they would break it down (R. 88).

In the various little houses, one of the officers noticed a hot water tank and a mash barrel. In the second shed he saw two 5 gallon bottles and cases with gallon bottles of a brownish liquor that had no strip stamps,

no indication that tax had been paid (R. 44 and R. 45). In the third building, or second shed, he found a still condensor (R. 45). No still was connected up or in operation. Nothing was assembled as a still (R. 49). The witness said he found parts that could have been used as a still.

“It actually wasn’t set up as a still, was it?

The Witness: That’s right.” (R. 49).

There was nothing connected, there was no gas connection, no water connection, there was no steam coming up, there was no mash made. The still was not in operation when they were there (R. 60). The search warrant only specified search for tax unpaid distilled spirits (R. 61), nevertheless went on to search the premises. They they destroyed barrels and paraphernalia and broke bottles (R. 64). From an oak keg, Officer James H. Coughran drew off one gallon (R. 75). He drew out one five-gallon jug (R. 79) then destroyed the barrel, and destroyed everything else on the premises except another jug. No one ever saw a still in operation, or assembled it to see whether it worked or whether it was in operation as a still (R. 85). There was a pot that was in a wooden crate (R. 85).

In their inventory, there were 38 gallons destroyed and only 40 gallons in the barrel. Five of the men were working (R. 89). In his inventory the officer listed 40 gallons destroyed and then scratched out 40 (R. 92).

When the officers left the premises, two bottles undestroyed were left and Officer Coughran was told to go back that evening and pick up the two bottles.

When he got back there the two bottles were not there. It was late in the afternoon. He does not know what happened to those two bottles (R. 95). It took about an hour to break up everything (R. 170-R.172). Marvin Reeves testified that on September 15, 1955, he had occasion to go back to the place to help clean it up and he found two bottles containing a liquid (R. 225) and he just threw them into the other pile of glass and destroyed them. He removed the two caps from the two bottles (Def. Exh. B & C). It was approximately 4:30 (R. 227). The two caps were marked and contained marks of John J. Linder, one of the Internal Revenue agents. The Clerk of the United States District Court was unable to find the search warrant or the affidavit in connection with it (R. 230). At the trial, two other bottles of purportedly whiskey, appeared, and it was claimed by the officers that they had taken those two bottles and put them in the safe. This conflicted with their inventory.

SPECIFICATION OF ERRORS

I.

THE DISTRICT COURT ERRED IN FAILING TO SUPPRESS THE EVIDENCE ILLEGALLY SEARCHED AND SEIZED IN VIOLATION OF THE FOURTH AND FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND FAILING TO GRANT JUDGMENTS OF ACQUITTAL ON THAT GROUND.

II.

THE VERDICTS ARE CONTRARY TO THE LAW AND THE FACTS.

III.

THE COURT ERRED IN THE RULING ON ADMISSIONS AND EXCLUSION OF EVIDENCE IN THE TRIAL OF THE CASE.

IV.

THE COURT ERRED IN INSTRUCTIONS GIVEN AND REFUSED.

V.

THE STATUTES HERE INHERENTLY AND AS CONSTRUED AND APPRISED ARE UNCONSTITUTIONAL IN THAT THEY ARE TOO VAGUE, INDEFINITE AND UNCERTAIN TO FORM THE BASIS OF A CRIMINAL CHARGE.

I.

**THE DISTRICT COURT ERRED IN FAILING TO
SUPPRESS THE EVIDENCE ILLEGALLY
SEARCHED AND SEIZED IN VIOLATION OF
THE FOURTH AND FIFTH AMENDMENT TO
THE CONSTITUTION OF THE UNITED
STATES AND FAILING TO GRANT JUDG-
MENTS OF ACQUITTAL ON THAT GROUND.**

We were unable to find the affidavit at any time on which the search warrants were based. Such affidavits and search warrants have to allege, in writing, the fraud upon the revenue has been or is being committed upon or by the use of exactly specified and described location, and it must contain a description of the property to be seized.

The Fourth Amendment applies to search warrants issued to Internal Revenue officers.

Wagner v. U. S., 8 F. 2d 581.

You have to particularly describe the person and place to be searched and the person or thing to be seized.

The Fourth Amend. to the Const. of the U. S.

Belief of an officer is not sufficient for the issuance of a warrant.

U. S. v. Laechew, 298 F. 652.

A probable cause is not shown even by the smelling of the odor of fermenting mash.

Alveau v. U. S., 33 F. 2d 467.

See 24 OAG 685 on what must be stated and what must be set out in the search warrant.

Obviously, the search cause intended of the two houses where the officers went under the search warrant. When they found nothing they went to a place where they had no search warrant.

A search warrant authorizing search of the garage and the basement of a house is insufficient to permit a search of the entire building.

Poldo v. U. S., CCA 9 (55 F. 2d 866) ;

Byars v. U. S., 273 U. S. 28, 32;

U. S. v. Veedor, 246 U. S. 675.

The warrant must so describe the articles to be seized, that the officer's sole function is identification, not discretion and selection.

U. S. v. Smith, 23 F. 2d 929.

A search warrant containing no description of narcotic drugs to be seized was held invalid.

Rice v. U. S., 24 Fed. 2d 479.

A search warrant describing "ranch with small building used for residence, located about 5 miles in a westerly direction from named town should be crossed for insufficiency.

Farrell v. U. S., (CCA 9) 33 Fed. 2d 71.

The description of the premises as certain street number is insufficient to warrant a search and seizure of the property on the 4th floor of the building.

U. S. ex rel Sunrise Products Co., Inc. v. Epstein, 33 Fed. 2d 982.

In the instant case the warrant neither described the location later searched nor the specific things seized and destroyed.

Where a search and seizure is actually based on the purported warrant the government cannot contend that the warrant was unnecessary and that the prosecution was for a conspiracy and not a substantive offense.

U. S. v. Bosoni, 57 Fed. 2d 328.

(1) The motion to suppress the evidence on the grounds of illegal search and seizure therefore should have been granted and the motion for judgment of acquittal on the same ground should have been granted.

(2) The Fourth and Fifth Amendments, U. S. Consitution, provide "no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized." There was no particularity of description of the place to be searched and there was no particularity of description of the things to be seized.

The section must be literally construed to safeguard the right of privacy.

Byars v. U. S., 273 U. S. 28.

Its protection extends to offenders as well as the law-abiding.

Weeks v. U. S., 233 U. S. 383;

Agnello v. U. S., 269 U. S. 220, 232;

U. S. v. Lefkowitz, 285 U. S. 452.

II.

**THE VERDICTS ARE CONTRARY TO THE LAW
AND THE FACTS.**

Evidence received in violation over and beyond the search warrant is improperly received.

U. S. v. Lee, 83 Fed. 2d 195.

The evidence is insufficient to support the verdicts and each of them. The evidence is contrary to the law. In count two of the indictment, the appellant was charged with "With carrying on the business of a distiller without having given a bond as required by U. S. Code Title 26, Sec. 5176 (a), and did engage in, carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him." Nowhere in the evidence does it show that the defendant carried on the "business of a distiller."

The Internal Revenue Code of 1954, while giving many definitions of many things, gives no definition of what constitutes the "business" of a distiller. Insofar as the statute fails to define what constitutes the "business" of a distiller, it is too vague, uncertain and indefinite to constitute criminal legislation and must fall under the due process clause of the Fifth Amendment to the Constitution of the United States.

In *M. Krause & Bros. v. U. S.*, 327 U.S. at 622, 90 L.Ed. 899, the Supreme Court said:

"A prosecutor, in framing an indictment, a court in interpreting the administrator's regulations, or a jury in judging guilt, cannot supply

that which the administrator failed to do by express word or fair implication. Not even the administrator's interpretations of his own regulations can cure an omission or add certainty and definiteness to otherwise vague language. The prohibited conduct must, for criminal purposes, be set forth with clarity in the regulations and orders which he is authorized by Congress to promulgate under the Act. Congress has warned the public to look to that source alone to discover what conduct is evasive and, hence, likely to create criminal liability."

U. S. v. Resnick, 299 U.S. 207, 81 L.Ed. 127.

The cases that hold statutes that are too vague and indefinite to constitute criminal liability are legion. In *Lanzetta v. New Jersey*, 306 U.S. 451, 83 L.Ed. 888, the court held the word "gangster" to be too vague and indefinite to constitute standard of guilt. If the word "gangster" is too vague, what about the word "business" undefined? When is one in business? Is it engaging in commercial enterprise? Is it when he sells something for a commercial purpose? Is it when he has a store or front as the May Company, or Bullocks, or the Emporium? When does "business" begin and when does it end? The statute gives no definition. For other cases, see: *Connolly v. General Construction Co.*, 269 U.S. 385; *U. S. v. L. Cohen Grocery Co.*, 255 U.S. 81 65, L.Ed. 516.

But if we try to define "business" ourselves as something engaged as an occupation engaged in mercantile transactions or commercial enterprises, we fail to find one scintilla of evidence in this record to estab-

lish that the defendant engaged in any commercial enterprise. It is not shown that he ever made a single sale, or buy, or that there was anything financial connected. As far as the evidence goes, it might have been for his own personal use and for the use of his family. Then this count three necessarily fails, also because there is further no evidence that he engaged in or intended to engage in "the business of a distiller." There would then be no need to give any notice.

Count Four charged likewise carrying on the "business" of a rectifier. There is no evidence that he carried on the "business" of a rectifier. Who is, or who is not a rectifier, is not defined by the statutes. But in any event, there is no evidence however that he carried on the business of a rectifier.

Count Five charged possession of approximately 40 gallons of distilled spirits, which did not have affixed thereto a stamp denoting the quantity of distilled spirits and evidencing payment of Internal Revenue tax for it. In this connection the officers claim to have had 2 gallons of spirits which mysteriously appeared after the officers had turned in an inventory to the defendant stating that they had destroyed all of the spirits on the premises except 2 gallons, and the 2 gallons were left in two containers on the premises for which the officer later returned. They had been destroyed.

The question necessarily arises whether proof, if there is proof of 2 gallons, there is proof of 40 gallons of un-tax-paid liquor. We respectfully submit that it

is not and that there is a fatal variance between the indictment and the proof. Section 5642 of Title 26, reads as follows:

“Any person who violates any provision of section 5008(b), or who, with intent to defraud, falsely makes, forges, alters, or counterfeits any stamp made or used under such section, or who uses, sells, or has in his possession any such forged, altered, or counterfeited stamp, or any plate or die used or which may be used in the manufacture thereof, or any stamp required to be destroyed by such section, or who makes, uses, sells, or has in his possession any paper in imitation of the paper used in the manufacture of any such stamp, or who reuses any stamp required to be destroyed by such section, or who places any distilled spirits in any bottle which has been filled and stamped under such section without destroying the stamp previously affixed to such bottle, or who affixes any stamp issued under such section to any container of distilled spirits on which any tax due is undetermined or unpaid, or who makes any false statement in any application for stamps under such section, or who has in his possession any such stamps obtained by him otherwise than as provided in section 5008(b)(2), shall on conviction be punished by a fine of not more than \$1,000, or by imprisonment at hard labor for not more than 5 years, or both. Any officer authorized to enforce any provision of law relating to internal revenue stamps is authorized to enforce this section and section 5644 (relating to the bottling of distilled spirits in bond).”

This section does not forbid the *possession of the distilled spirits* in this case, which was charged in the indictment.

There were no 40 gallons in the two one-gallon jugs which were brought into court and placed in evidence. The defendant had not placed the liquid in these bottles—they were placed in the bottles by the agents themselves. This did not constitute a violation of Section 5642. Furthermore, there is no evidence whatsoever that the distilled spirits were not for the immediate consumption on the premises, or for preparation for such consumption.

We respectfully submit that the evidence is insufficient to sustain the judgments on each of the counts named.

III.

THE COURT ERRED IN THE RULING ON ADMISSIONS AND EXCLUSION OF EVIDENCE IN THE TRIAL OF THE CASE.

The court erred in admitting into evidence the various exhibits because they were illegally searched and seized and because there is no evidence that any of them were used in the “business” of a distillery.

We have previously cited numerous authorities under Point I.

IV.

THE COURT ERRED IN INSTRUCTIONS GIVEN
AND REFUSED.

The court refused Defendant's Instruction No. 5 which was proffered, reading as follows:

“Words used in a law or statute are construed in their ordinary and accepted meaning and use. The word ‘business’ as used in the statute has such a common meaning, being defined by Webster as ‘mercantile transactions’—‘a commercial or industrial establishment or enterprise.’ Unless you find that the defendant was so engaged you must acquit him of the charges of or requiring him to be in the business of a distiller.”

Since the statute gave no definition of what constituted “business” the defendant attempted to offer one from a dictionary. The court refused to give the instruction, hence the jury, like *Screws v. U. S.*, 325 U. S. 91, 107, was left without rudder or oar to guide it, on what constituted business under any construction and it had to guess at its own interpretation of the law. A defendant is entitled to have the jury given the instructions which define the essential elements of the case.

Screws v. U. S., 325 U.S. 91, 107.

V.

**THE STATUTES HERE INHERENTLY AND AS
CONSTRUED AND APPRISED ARE UNCON-
STITUTIONAL IN THAT THEY ARE TOO
VAGUE, INDEFINITE AND UNCERTAIN TO
FORM THE BASIS OF A CRIMINAL CHARGE.**

The court erred in denying motions for judgments of acquittal on the evidence in this case, which were made at the conclusion of both the Government's case and the defendant's case, upon each of the grounds specified. Rule 29 Rules of Procedure. We have previously pointed out the insufficiency of the evidence.

For which reasons, and each of them, appellant prays for reversals of each of the judgments.

Respectfully submitted,

MORRIS LAVINE

Attorney for Appellant.